

India's Maritime Borders

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Introduction

This article covers the important subject of Delineation of India's Maritime Borders, with special reference to Pakistan and Bangladesh. Maritime issues have many times taken a back seat with vast majority of India's politicians and senior bureaucrats from hinterland, for whom seas are out of sight and hence out of mind. The Security and Economic issues for a Maritime Nation like India are too serious to be ignored in the "21st Century of the Seas", especially on Food and Energy Securities and galloping Commerce in the New World order. In order to be a developed state by 2020, India needs to pursue a more focused policy and urgent attention on Maritime Affairs. Peaceful Maritime Borders (BM) with neighbouring Maritime States is a pre requisite for rapid development.

Comfort Zone (Refer to Map 1)

India has been fortunate to delineate her Maritime Boundaries (MBs) with five of her seven neighbouring countries in twelve agreements between 1974 and 1993, which have kept good bilateral relations. These Maritime Boundary Delineations (MBD) were mostly done adopting the median principles between their coasts and historical waters. These have worked well over the years except with Sri Lanka, where ceding of Kachativu Island to Sri Lanka in 1974 has been a persistent irritant for fishermen in the area due to considerable fish potential in the area and on going LTTE activities. The perennial poaching in the Andaman Sea by fisherman of Myanmar and Thailand has been a manageable issue with arrest of poachers and political acceptance. However efforts to resolve Maritime Boundaries with Pakistan and Bangladesh have been very slow due to their linking with other bilateral political issues. Political expediencies have adversely contributed to resolving fairly simply solutions on established International Maritime Principles and Practices, with some give and take by both parties.

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Map 1



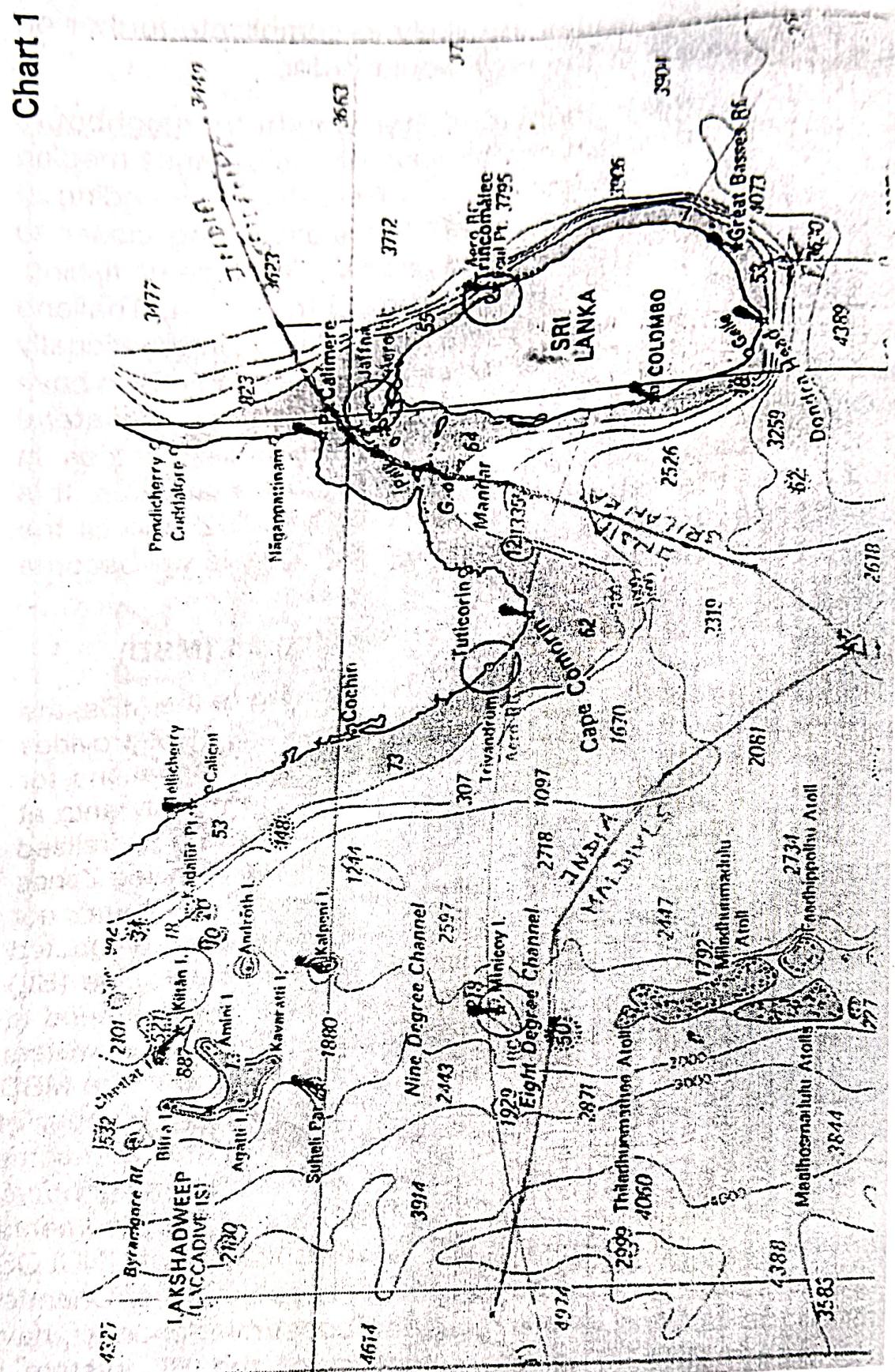
The Maritime Boundary Issues are likely to complicate further on Economic Compulsions in the new world order.

The MBD between India and her southern neighbours (Maldives and Sri Lanka) is a combination of equidistance median lines and historical waters, especially in Palk Bay. The ceding of Kachativu Island to Sri Lanka in 1974, despite being closer to Indian Coast than the Sri Lanka Coast has been irksome on fishing. The BMD along Eastern neighbours namely Indonesia, Thailand and Myanmar have been successfully competed on internationally accepted principal of equidistance median lines. These MBDs have withstood the test of time with very little irritants in bilateral relationships. The pragmatism shown by the four countries in arriving at acceptable MBD since 1970s, is indeed laudable. It is to be noted that the extension of MBD beyond EEZ and till the Continental Shelf areas with Sri Lanka and Indonesia will become necessary in the near future.

Framework for Maritime Boundary Delimitation (MBD)

Chart 1 refers. For any satisfactory resolving of the MBs, the United Nations Convention Laws of Seas (UNCLOS) 1982 provides reasonable frame work, even in the light of the aspirations for Maritime Zones. Delays in MBD unduly push up investments at Sea with attendant commercial issues, especially in a liberalised World Economy. Specific provisions of the National Maritime Zones Acts of Pakistan and Bangladesh (including rules thereunder), not in conformity with the UNCLOS provisions, have also contributed to the complications. Important ingredient of the Base Line (BL) system under the UNCLOS and National Laws, perforce need to be broadly compliant with International law. Historical waters concept can be applied to some areas, as was done in the MBD with Sri Lanka in Palk Bay. Fortunately, there are a number of MBD Agreements worldwide between Maritime States and some of the nuances for resolving the MBD with India's neighbours, including the Riverine areas, can be learnt from such Agreements. Equidistance principal from the, BL's under Article 15 of UNCLOS, Thalweg Principle on Centre of the Navigable River/Channel, proximity of the Islands to the mainland coast/river/channel, have resolved many MBs. The promulgation of the BL system in accordance with UNCLOS provisions will help legal enforcement and reduce undue tensions. From Maritime States perspectives, it

Chart 1



INDIA'S MARITIME BORDER DELIMITATION
WITH SOUTHERN NEIGHBOURS

would be necessary to construe their borders from the outermost legal regime in the form of Continental Shelf/Exclusive Economic Zone/agreed MB, provide such measures that will strengthen Maritime Security and thereby establish State Practices over the years with attendant patrols and historical use of such waters. India, regrettably, has not taken this important aspect with seriousness, especially in Sir Creek and New Moore areas.

India-Pakistan MBD

The issue of India-Pakistan MBD is delayed, not for complexity on International Principles, but because of its linkage to other politically sensitive issues. Historically, Sir Creek dispute started over a pile of logwood on her banks in 1900s, which led the then rulers of Kutch and Sind provinces referring the issue to the then Govt of Bombay. The agreed Resolution of 1914 was documented in the form of Map S44. This map was implemented in 1975 through Pakistan Map B74 with the Centre of the Navigable Channel as the Maritime Limit upto Sir Mouth. Sir Creek is approximately 60 KM long upto the Northern Point and the East-West boundary line is 38 KM long. The Western Boundary Tribunal, agreed to by both parties, gave the award in 1968, which upheld 90% of the Indian claim in the Rann of Kutch, but left the Sir Creek Maritime Demarcation to the dotted lines in the centre of the channel. Out of the 68 pillars erected along the East-West Line, only 38 pillars were intact in 2005. Despite a clear way ahead, role of the interlocutors and substantial rounds of talks under the Composite Dialogue on Confidence Building Measures (CBM), both countries have failed to arrive at an acceptable MBD. The result is economic deprivation from offshore resources, especially on the Energy and Food Securities on either side of the notional MB in exploitable areas, known for such potential.

The British Govt had maintained records of the Geomorphology of Sir Creek area, which provide reasonably good data to resolve the MBD on historical data basis. The Resolution of 1914 between the then Sind Province and the State of Bombay was laudable. However the actual demarcation over maps in 1924 created the present issue of whether to give credence to the well established International Principle of Thalweg (the centre of the Navigable Channel in Sir Creek) or the broad green ribbon line to indicate land boundary as per then prevalent cartographic principles. India has carried out hydrographic surveys in the area from time

to time to update the Navigational Charts, which has revealed perceptible changes in Geomorphology, including the crucial centre of the Navigable Channel in Sir creek. The shift in stands from historical data to joint survey on the part of Pakistan seems tactical to keep better options and derive more maritime areas. It is also important to note that any further delay in MBD from EEZ to Sir Creek beyond 2009, may result in the Continental Shelf areas of both countries coming under the ambit of the International Seabed Authority (ISBA) under UNCLOS provisions, unless the deadline is extended by the State Parties again in their meeting at the United Nations in 2008.

Salient Features of Agreements

Absence of a well Coordinated Boundary in 1924/1968 has led to different interpretations on either side, compounded by the fact that the International Tribunal did not go into the Maritime Boundary from the western terminal point to the centre of the Navigable Channel in Sir Creek at the request of both parties. Consequent to the Simla and Agra political agreements to deal with all pending issues at bilateral level, delays have occurred on MBD. The change in stand by Pakistan to keep both historical and joint survey options in 2004 is indeed significant and needs to be treated with circumspection.

The Indian Stand

The consistent Indian stand is based on historical data, international/State practices and UNCLOS provisions. India wants the East-West horizontal line (marked by the erected pillars) as the land boundary, the centre of the Navigable Channel upto Sir Mouth marked by the dotted lines in 1914/1924 agreements as the MB within Sir Creek and the common BLP at the centre of the Sir Mouth based on legally published Navigational Charts. India has also officially protested the BLP "K" of Pakistan on the eastern bank of Sir Creek. The historical use of Sir creek waters for fishing by the Indian fishermen over decades further strengthens Indian position. Provisions of paras 9 & 10 of the 1914 resolution is reflected by the dotted lines in the Centre of the Sir Creek channel in all Maps and Charts, including the final map of 1924 on delimitation India has suggested a seaward approach from EEZ and highlighted the urgency in achieving the MBD view Continental Shelf claims deadline in 2009.

The Pakistan Stand

Pakistan has argued that Sir Creek is not Navigable, common BLP should be their point "K", Equity under MZP Act and joint survey be carried out to study the changes in the Geomorphology of the area. Their desire to control more areas in Sir Creek by shifting the East-West horizontal line southwards and MB within Sir Creek channel to point "K" is evident.

Implications for India on MBD with Pakistan

Pakistan's tactical approach from historical to present survey data lies in the Geomorphological changes caused by reported artificial melting of their Glaciers with attendant river training since 2002 and the Satellite Imageries of the area, indicating shifting of the centre of the Navigable Channel Eastwards, coming close to their BLP 'K'. The Joint Survey in 2007 may not fully alter the picture, except that a fully modern coordinated system is now available for the survey data. The Equity Principle of Pakistan is not tenable under Articles 69 & 70 of UNCLOS, since Pakistan is neither Geographically disadvantageous nor Land/Shelf locked, but has its own Maritime Zones upto the EEZ.

If the claim of Pakistan is accepted, apart from the high value targets in Gujarat (eg Armed Forces Bases, Reliance Petrochemical Complex, Vadinar Deep Water Terminal, Kandla major Port, many non major Ports, Shipyards etc) coming closer to their reach for land/sea/air attacks, there are Political and Economic repercussions too, especially on the Fisheries and Natural Resources wealth, with some reduction in Indian Territorial Waters/EEZ/CS. The inability of India to promulgate the baselines (despite being finalised in 2003) has further weakened our position and legal enforcement of violations. MBD in Sir Creek must avoid a repeat of Kachativu with attendant prolonged irritants in relationship. It is important to underline that any major concessions made by India is likely to be sought elsewhere also.

Likely MBD with Pakistan

There is merit in both India and Pakistan resolving the MBD through a compromise of Historical and Joint Survey data, but with adherence to established principles of Thalweg (ie the centre of the navigable channel) and the UN Handbook on MBD without

unduly affecting each others concerns. In view of the deadline of 2009 for Continental Shelf claims for marine resources under Article 76 of UNCLOS, it would be pragmatic to adopt the Seaward Approach from 200 NM to approx 20 NM from Sir Creek, based on Equidistance principles from both main coasts and without involving any disputed BLPs in Sir Creek. Thereafter resolve the balance 20 NM of MBD upto Sir Creek Mouth. Thus approximately 180 NM of well coordinated MBD would facilitate Confidence Building and enable both countries to exploit their Natural Resources in an ever increasing investment costs with attendant effects on Energy and Food Security. Common BLP in Sir Creek can then be finalised based on historical and joint survey data with minor adjustments. This approach will help resolve the overlapping Continental Shelf claims, based on their claims and approval by the UN Commission on Limits of the Continental Shelf (UNCLOS).

Imperatives for Peaceful MBD with Pakistan

Whilst agreeing on a just Maritime Boundary, some least cost measures must be adopted that would minimise future irritants, out of which a CBM on fishing is a top priority. A well coordinated mechanism between the security agencies of both countries in conflict situations, will go a long way in minimising tensions that both States had witnessed since Independence. An established navigation system of Lighthouse/ Lighted buoys will help guide the fishermen and security agencies against entering each others legal waters. The general light house accepted for establishment at Kori Creek as per Godbole Committee on internal security in 1999, be established without any further delay, even by resorting to an offshore platform mode with the help of oil exploration firms.

India-Bangladesh MBD

The MBD with Bangladesh has hardly made progress due to the reluctance of Bangladesh to discuss the issue. New Moore Island (South Talpatty by Bangladesh) was noticed from West Bengal Revenue Records in 1974 and included in the Indian Govt List of "Islands in Possession of India" (total 1135) by the Ministry of Home Affairs in consultation with Chief Hydrographer to the Govt of India. The official Land Boundary Delimitation was based on 1947 Radcliff award along the main channel of the Haribhanga River till it meets the bay. First round of talks started in 1974 with Bangladesh proposing

a southerly line from the mouth of Haribanga River. New Moore island (NMI) is closer to the nearest Indian Coast at 5 kms against the 7 km from the Bangladesh Coast. Hydrographic Surveys were carried out by Indian Navy between 1975 and 1981, which only confirmed the proximity of the island to India and the Navigable Channel (10 to 20 metres depth) flowing to the East of NMI and suitably reflected in the official Navigational Charts published by India, UK and the USA since 1976. The Indian ownership is also reflected in the erected boundary/ ownership pillar. In fact, Bangladesh questioned the ownership of the NMI only in 1979 with attendant political upheaval and freeze in relationship. Bangladesh proposal for joint surveys in the area have not been agreed to by India due to clear survey results/data. Inconsistency of Bangladesh Base Line System of 1979 along 20 metre depth contour vis a vis UNCLOS, their demand for "No Switch Ground" unsupported by any international principles and the emergence of the NMI are major factors for MBD. Both historical survey data and the Satellite Imageries clearly point to the centre of the Haribhanga River running to the east of NMI. Initiatives of India for resolving the Maritime Boundary have not received much response due to political situations in Bangladesh. Nor much Track II diplomacy has been undertaken, possibly because there has been no major intrusions on either side. The Equidistant Tri Junction Point (TJP) between Bangladesh, Myanmar and India provides an opportunity to resolve the much overdue MBD, with some adjustment on both sides.

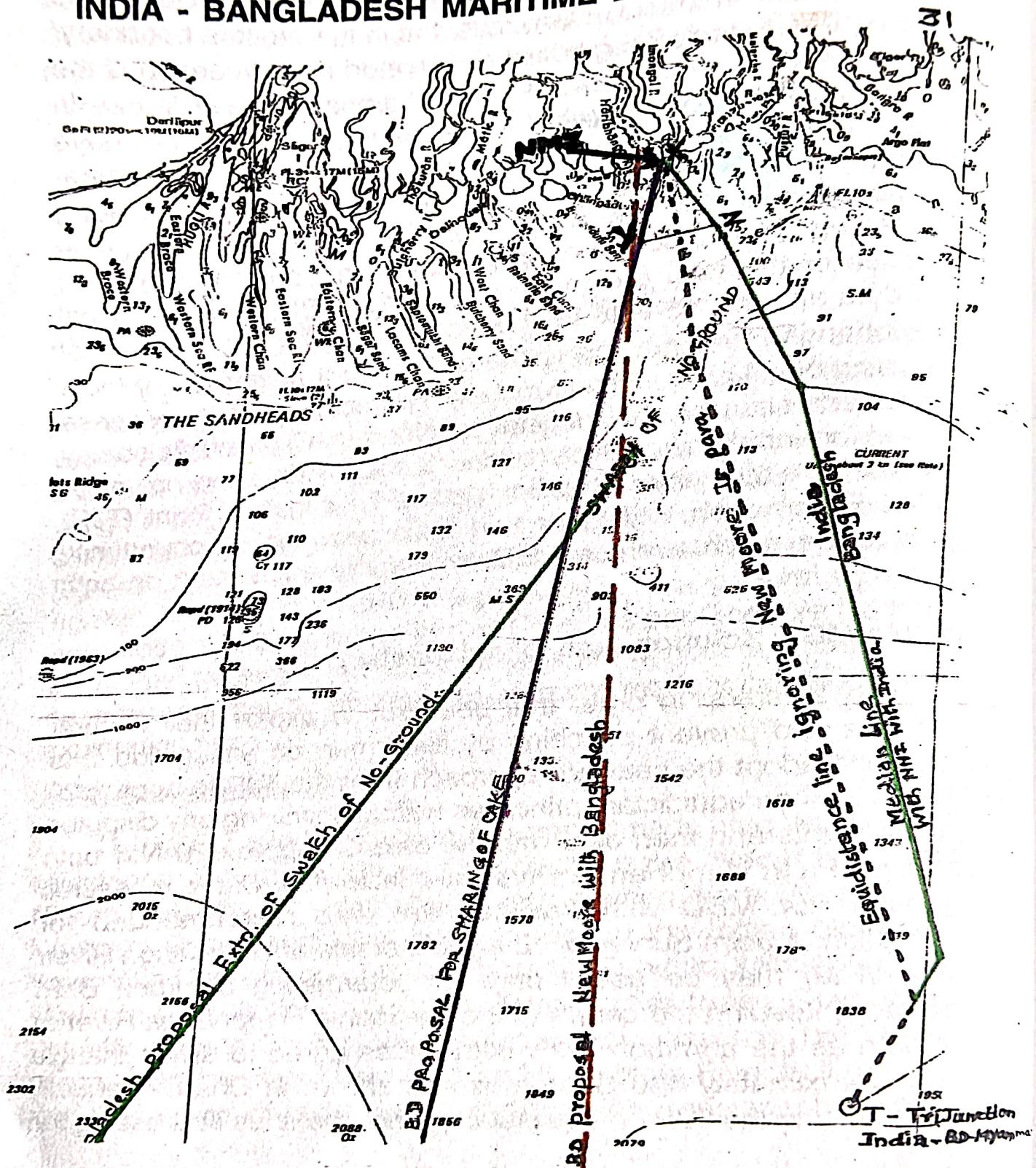
Possible MBD Solution with Bangladesh

Chart 2 refers. In order that both States exploit their Natural Resources and prevent poaching by fishermen on either side, it is desirable to adopt the seaward approach from the TJP to approx 20 NM from NMI on equidistant principles without involving any disputed baseline points and then deal with the balance approx 20 NM upto common BPL in Haribhanga River at a later date. Same measures suggested for MBD with Pakistan are also recommended for Bangladesh. A Joint Survey of 10 KM eitherside of Harbhanga River/ Channel/NMI may be useful only for determining common BLP. Alternately, keeping the centre of the Navigable Haribhanga River at its mouth as the common BLP, both states agree to divide triangle XYZ (approximately 400 Square Km as shown in Chart 2) equally and connect to the TJP on equidistant principles; thus addressing the

concerns of Bangladesh for Natural Resources and subject to Bangladesh adjusting her Base Line System in conformity with UNCLOS.

Chart 2

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CONCLUSION

Resolution of the Maritime Boundaries with Pakistan and Bangladesh on established principles of UNCLOS with some adjustment is most desirable for lasting Peace and Economic benefits. It is essential to learn from past MBD worldwide and ensure a more comprehensive agreement that will ensure lasting peace in Maritime Areas, especially from the angles of Fishermen from both sides and Offshore resources Exploitation. India would do well to promulgate the already finalised Base Line System and claim her continental shelf areas with supporting Scientific and Technical data before the UNCLCS by 2009 and prepare to negotiate MBD on overlapping Continental Shelf areas with Pakistan, Sri Lanka and Indonesia. It is important for India to note that there will be common threads in both the MBD with Pakistan and Bangladesh and jurisprudence is necessary in the principles and adjustments.